

RID (Rule Interpretation Decision)

(Use additional sheets as necessary)

Type of RID	Requested Response Time	DSD Assigned RID # 91
Customer RID <input type="checkbox"/>	24 hours <input type="checkbox"/>	
Internal Staff RID <input type="checkbox"/>	10 working days <input type="checkbox"/>	
	As time available <input type="checkbox"/>	

- 1. Project Name:** Microbrewery
- 2. Project Number:** Not applicable
- 3. Project Street Address:** Not applicable
- 4. Applicant Name:** John Jacks, Principal Planner, Drenner & Golden Stuart Wolff LLP.
- 5. Applicant Address:** 300 Convent St, Suite 2600, San Antonio, Texas 78205
- 6. Applicant Telephone #:** 210-745-3702
- 7. Applicant e-mail Address:** jjacks@drennergolden.com
- 8. Rule in Question:** Sec. 35-311 Use Regulations, Table 311-2 Nonresidential Use Matrix, "Microbrewery"

9. Applicant's Position:

Date: 11-09-2010 **Contact:** John Jacks **Contact Telephone #:** 210-745-3702

The term "Microbrewery" means a smaller business or facility that legally distinguished (by its production size) from a much larger business or facility that is classified as "Beverage Manufacture or Brewery-Alcohol," under the Unified Development Code (UDC). It is also distinguished from a "brew pub," which sells beer brewed (in even smaller quantities) on premises to consumers.

The Use Matrix includes two uses: "Microbrewery" and "Beverage Manufacture or Brewery-Alcohol". Both facilities manufacture and package beer. However, they are currently not defined in the UDC. It is both clear and logical that the difference between these classifications is the amount of beer produced and distributed.

Large breweries, or "Megabreweries", are typically large scale brewing operations that may utilize a number of locations throughout the country and overseas. These megabreweries produce hundreds of millions of barrels of beer per year and are typically required by law to rely on third parties for distribution. Current examples include the Miller brewery in Fort Worth and the Anheuser-Busch brewery in Houston. Locally, the former Lone Star Brewery would have once met this definition. Locally, companies like Silver Eagle Distribution (Budweiser and other products), Galo Distributing (Miller/Lite),

and GLI Distributing (Shiner Bock, Lone Star, Dos Equis) provide this service to those large brewers.

In contrast, a “Microbrewery” or “Regional Brewery” may produce between 2,000 and 2,000,000 barrels of beer per year with 75% or more of its beer sold off site. (In Texas, per statute, all beer must be sold offsite. The product is typically sold through retailers/restaurants/pubs or through wholesale distributors.) However, this range is both arbitrary and broad.

Texas law provides a clear legal distinction between small and large brewers. Section 12.05 of the Alcoholic Beverage Code permits small brewers (those that manufacture less than 75,000 barrels (bbls) of beer per year) to self-distribute their product to retailers and/or restaurants/pubs. The statute, as well as Chapter 62 and Section 203.08 of the same Code, relies on the threshold of 75,000 bbls/year to distinguish between large and small breweries. Smaller beer brewers that meet this standard include Real Ale (Blanco) and St. Arnold’s (Houston). (It should be noted that unlike brew pubs, micro breweries in Texas are currently not permitted to sell directly to the consumer.)

We assert that this statutory distinction, which regulates all Texas brewers, is the correct threshold to distinguish between a “Microbrewery” and a facility under the classification, “Beverage Manufacture or Brewery-Alcohol.”

Furthermore, this manufacturing threshold (75,000 bbls/year) is strictly monitored by the TABC, as actual brewery production is a Texas public record. The availability of this state agency data would provide third-party verification of compliance by a Microbrewery with size standard if adopted as the definition under the UDC.

We propose that the UDC be amended to include the following definitions as follows:

Brew Pub. A Restaurant or Bar/Tavern, featuring malt liquors such as beer and ale, using grains such as oats, hops, rice, wheat and barley, that is brewed on-site for on-site retail sale to restaurant or Bar/Tavern patrons. *(Currently, State Law does not allow Brew Pubs to distribute their products, only direct sales from the brew pub location.)*

Micro Brewery. A small-scale brewing facility designed for the production of malt liquors such as beer and ale, using grains such as oats, hops, rice, wheat and barley, designed and managed to brew no more than 75,000 barrels of beer per year. The following uses may be permitted as accessory to a Micro Brewery:

1. Sampling and the sale for on- and off-site consumption of the brewery’s products;
2. Meeting/Reception Facilities; and
3. Retail sales of items primarily associated with the brewery (e.g., glassware, souvenirs, promotional items, etc.) and conducted within the brewery or an accessory structure.

“Beverage Manufacture or Brewery-Alcohol – Large Scale” A large-scale brewing facility for the production of malt liquors such as beer and ale, using grains such as oats,

hops, rice, wheat and barley, designed and managed to brew more than 75,000 barrels of beer per year. The following uses may be permitted as accessory to a Micro Brewery:

1. Sampling and the sale for on- and off-site consumption of the brewery's products;
2. Meeting/Reception Facilities; and
3. Retail sales of items primarily associated with the brewery (e.g., glassware, souvenirs, promotional items, etc.) and conducted within the brewery or an accessory structure.

10. Staff Finding:

(Including date of finding and name of city staff person formulating finding)

Date: 12-02-2010 **Contact:** Andrew Spurgin **Contact Telephone #:** 210-207-8229

Current brewpub uses in San Antonio are materially similar uses to restaurants or bars/taverns and therefore creation of a new entry in the permitted use matrix is not necessary. Local examples include Blue Star Brewing Company and Freetail Brewing Company.

Staff concurs with applicant's position that the distinction in the State Statute, which regulates all Texas brewers, is the correct threshold to distinguish between a "Microbrewery" and a facility under the classification, "Beverage Manufacture or Brewery-Alcohol."

11. Staff Position:

(Including date position presented internally and name of city staff person formulating position)

Date: 12-02-2010 **Contact:** Andrew Spurgin **Contact Telephone #:** 210-207-8229

No changes are necessary to the permitted use table, which already provides separate entries for "Alcohol – Beverage Manufacture or Brewery – Alcohol" and "Alcohol – Microbrewery."

The latter two definitions proposed by the applicant, with appropriate thresholds based on State Statute, should be considered in a future UDC update program.

An addition of brewpub is not necessary as the existing business practices allow the use to be classified either as a restaurant or as a bar/tavern under existing entries in the permitted use tables.

12. Departmental Policy or Action:

(Including date of presentation of policy or action to the applicant, the effective date of the policy or action, schedule for pursuing an amendment to the code if required and signature of the Director)

Date of policy/action: Immediately **Effective Date of policy/action:** Immediately

No changes are necessary to the permitted use table, which already provides separate entries for “Alcohol – Beverage Manufacture or Brewery – Alcohol” and “Alcohol – Microbrewery” as well as appropriate entries for bar/tavern and food service establishments that may include a brewpub establishment.

TABLE 311-2 NON-RESIDENTIAL USE MATRIX													
	PERMITTED USE	O-1 & O-1.5	O-2*	NC	C-1	C-2	C-3	D	L	I-1	I-2	ERZD	(LBCS Function)

Alcohol	Alcohol - Bar And/Or Tavern Without Cover Charge 3 or More Days Per Week			S	S	S	P	P	P			P	2540
Alcohol	Alcohol – Bar And/Or Tavern With Cover Charge 3 or More Days Per Week						S	P					2540
Alcohol	Alcohol – Beverage Manufacture Or Brewery - Alcohol										P	NA	3110
Alcohol	Alcohol – Microbrewery						P	P	P			S	
Service	Food Service Establishment Without Cover Charge 3 or More Days Per Week (With or Without Accessory Live Entertainment)		P	P	P	P	P	P	P	P		P	2150
Service	Food Service Establishment With Cover Charge 3 or More Days Per Week (With or Without Accessory Live Entertainment)						S	P					2150

The following two definitions shall be used by Development Services Department staff to differentiate between the existing entries in the permitted use table:

Microbrewery. A small-scale brewing facility designed for the production of malt liquors such as beer and ale, using grains such as oats, hops, rice, wheat and barley, designed and managed to brew no more than 75,000 barrels of beer per year. The following uses may be accessory to a Microbrewery in conformance with §35-370:

1. Sampling and the sale for on- and off-site consumption of the brewery’s products;
2. Meeting/Reception Facilities; and
3. Retail sales of items primarily associated with the brewery (e.g., glassware, souvenirs, promotional items, etc.) and conducted within the brewery or an accessory structure.

“Beverage Manufacture or Brewery-Alcohol” May include the production of wines, spirits or a brewing facility for the production of malt liquors such as beer and ale, using grains such as oats, hops, rice, wheat and barley, designed and managed to brew more than 75,000 barrels of beer per year. The following uses may be accessory to an alcoholic beverage manufacturer or brewery in conformance with §35-370:

1. Sampling and the sale for on- and off-site consumption of the brewery’s products;
2. Meeting/Reception Facilities; and

3. Retail sales of items primarily associated with the brewery (e.g., glassware, souvenirs, promotional items, etc.) and conducted within the brewery or an accessory structure.

Staff is hereby directed to include these definitions in a future UDC update program.

Allowance for the two uses described above does not waive any other requirements of the City of San Antonio including but not limited to the restrictions imposed on alcohol sales by the C-2NA, C-3NA and C-3R zoning districts, specific use authorization requirements for live entertainment nor the requirements of Chapter 4 of the Municipal Code.



Roderick Sanchez, AICP, C.B.O
Director



Date